

BEFORE THE COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM HOTELS
STATE OF NEVADA

JOSEPH (J.D.) DECKER, Administrator,
REAL ESTATE DIVISION, DEPARTMENT
OF BUSINESS & INDUSTRY, STATE OF
NEVADA,

Petitioner,

vs.

LAS BRISAS HOMEOWNERS
ASSOCIATION; DONALD PIET; TED
CHAMPAIGN; JUDY ENGLAND; RICK
ERNEST; JERRY PRICE; and JOHN
CHRISTENSEN,

Respondents.

Case No. 2014-697

FILED

APR 07 2015

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

**COMPLAINT FOR DISCIPLINARY
ACTION AND NOTICE OF HEARING**

The Real Estate Division of the Department of Business and Industry, State of Nevada ("the Division"), by and through its counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Michelle D. Briggs, Senior Deputy Attorney General, hereby notifies Respondents LAS BRISAS HOMEOWNERS ASSOCIATION, DONALD PIET; TED CHAMPAIGN; JUDY ENGLAND; RICK ERNEST; JERRY PRICE; and JOHN CHRISTENSEN (hereinafter, collectively referred to as "RESPONDENTS") of an administrative hearing before the Commission for Common-Interest Communities and Condominium Hotels, State of Nevada, which is to be held pursuant to Chapters 233B and 116 of the Nevada Revised Statutes ("NRS") and Chapter 116 of the Nevada Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations stated below and to determine if an administrative penalty will be imposed on the RESPONDENT pursuant to the provisions of NRS and NAC including, but not limited to, NRS 116.785 and NRS 116.790.

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JURISDICTION AND NOTICE

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3 1. During the relevant times mentioned in this complaint, RESPONDENTS
4 DONALD PIET; TED CHAMPAIGN; JUDY ENGLAND; RICK ERNEST; JERRY PRICE; and
5 JOHN CHRISTENSEN were directors of RESPONDENT LAS BRISAS HOMEOWNERS'
6 ASSOCIATION (the "ASSOCIATION") located in Las Vegas, Nevada.

7 2. RESPONDENTS are subject to the provisions of Chapter 116 of each the
8 Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC") (hereinafter
9 collectively referred to as "NRS 116") and are subject to the jurisdiction of the Division, and
10 the Commission for Common-Interest Communities and Condominium Hotels pursuant to the
11 provisions of NRS 116.750.

FACTUAL ALLEGATIONS

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13 3. The ASSOCIATION is a self-managed 212 unit condominium association with a
14 reported annual budget of over \$390,000.

15 4. On January 27, 2014, the Division received an annual registration form from the
16 ASSOCIATION with missing audit and reserve study information.

17 5. The Division sent two letters to the ASSOCIATION requesting information on
18 their audit and reserve study.

19 6. The ASSOCIATION responded by letter stating in part:

20 The Association feels that it is keeping up on the work that needs to be done.
21 The last audit stated that a lot of money needed to be in the bank which would
22 have been a financial strain on the homeowners of this complex.

23 ...
24 Your letter implies that we are not taking care of business. But we feel we are.

25 7. The Division opened an investigation and by letter dated March 13, 2014
26 requested evidence of compliance with NRS 116.31152 to have a reserve study and NRS
27 116.31152 to have an audit performed.

28 8. By letter dated June 20, 2014, the Division sent the ASSOCIATION a second
request for a response to its letter.

1 9. The Division received Division Form 609 – Reserve Study Summary Form on
2 July 29, 2014 from the ASSOCIATION.

3 10. According to Form 609, the ASSOCIATION does not have a separate reserve
4 account and the last reserve study was performed in 2007.

5 11. On August 12, 2014, the Division received an annual registration form from the
6 ASSOCIATION stating that their financial statements were *reviewed* by a CPA as of July 15,
7 2014.

8 12. The ASSOCIATION also reported that “Jim Coats” conducted their reserve
9 study, but the Division does not have “Jim Coats” registered as a reserve study specialist.

10 13. The ASSOCIATION was asked to complete missing information.

11 14. By letter dated March 11, 2015, the Division’s investigator asked for a sworn
12 statement from each board member as to the alleged violations of law and requested copies
13 of the reserve study, minutes evidencing the board adopted the reserve study, and bank
14 statements for the reserve account for the prior 12 months.

15 15. RESPONDENTS responded with a typed letter with a separate signature page
16 signed by all the board members stating that the cost to do a reserve study or audit is the
17 same as replacing a roof or deck for a homeowner, which they maintain is their priority.

18 16. The only documents provided by RESPONDENTS were 4 bank statements
19 purported to be their reserve account which reflects a balance of approximately \$13,000 from
20 August 2014.

21 17. The Reserve Study Summary form submitted in July 2014 states the reserve
22 balance was \$100,000 as of the beginning of the fiscal year and \$100,000 is projected to be in
23 the account at the end of the fiscal year.

24 18. RESPONDENTS did not provide the reserve study allegedly performed by “Jim
25 Coats” or minutes of the board meeting where the board took action to adopt the study.

26 **VIOLATIONS OF LAW**

27 19. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(3)) by
28 committing an act or omission which amounts to incompetence, negligence, or gross

1 negligence by failing to comply with NRS 116.31144 and have their financial statements
2 audited by an independent CPA each fiscal year.

3 20. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(3)) by
4 committing an act or omission which amounts to incompetence, negligence, or gross
5 negligence by failing to comply with NRS 116.31152 and have a reserve study conducted
6 once every five years.

7 21. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(a)) by failing
8 to cause the ASSOCIATION to comply with all state laws by failing to comply with NRS
9 116.31144 and NRS 116.31152.

10 22. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(e)) by
11 failing to cause the ASSOCIATION to consult with appropriate professionals as necessary
12 before making any major decisions affecting the ASSOCIATION or the common elements.

13 23. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(5)) by impeding
14 or otherwise interfering with an investigation of the Division by failing to comply with the
15 Division's request for information and documents.

16 DISCIPLINE AUTHORIZED

17 Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS
18 116.790 the Commission has discretion to take any or all of the following actions:

- 19 1. Issue an order directing RESPONDENTS to cease and desist from continuing to
20 engage in the unlawful conduct that resulted in the violation.
- 21 2. Issue an order directing RESPONDENTS to take affirmative action to correct any
22 conditions resulting from the violation.
- 23 3. Impose an administrative fine of up to \$1,000 for each violation by RESPONDENTS.
- 24 4. IF RESPONDENTS ARE FOUND TO HAVE KNOWINGLY AND WILLFULLY
25 COMMITTED A VIOLATION of NRS or NAC 116 AND it is in the best interest of the
26 Association, such RESPONDENTS may be removed from his/her position as a director
27 and/or officer.
- 28 5. Order an audit of the ASSOCIATION, at the expense of the ASSOCIATION.

6. Require the BOARD MEMBERS to hire a community manager who holds a certificate.
7. Require RESPONDENTS to pay the costs of the proceedings incurred by the Division, including, without limitation, the cost of the investigation and reasonable attorney's fees.
8. Take whatever further disciplinary action as the Commission deems appropriate.

The Commission may order one or any combination of the discipline described above. If the Commission finds that the RESPONDENTS knowingly and willfully violated the provisions of NRS or NAC 116, the Commission may order that RESPONDENTS be personally liable for all fines and costs imposed.

NOTICE OF HEARING

PLEASE TAKE NOTICE, that a disciplinary hearing has been set to consider this Administrative Complaint against the above-named RESPONDENTS in accordance with Chapters 233B and 116 and 116A of the Nevada Revised Statutes and Chapters 116 and 116A of the Nevada Administrative Code.

THE HEARING WILL TAKE PLACE at the Commission meeting scheduled for **June 16, 17, and 18, 2015, beginning at approximately 9:00 a.m. each day, until such time as the Commission concludes its business.** The Commission meeting will be held at the **Gaming Control Meeting Room located at the Grant Sawyer Building, 555 E. Washington Ave., Room 2450, Las Vegas, Nevada 89101, with videoconferencing to the Gaming Control Meeting Room, 1919 College Parkway, Carson City, Nevada 89706.**

STACKED CALENDAR: Your hearing is one of several hearings that may be scheduled at the same time as part of a regular meeting of the Commission that is expected to take place on June 16-18, 2015. Thus, your hearing may be continued until later in the day or from day to day. It is your responsibility to be present when your case is called. If you are not present when your hearing is called, a default may be entered against you and the Commission may decide the case as if all allegations in the complaint were true. If you need to negotiate a more specific time for your hearing in advance because of coordination with out of state witnesses or the like, please call Claudia Rosolen, Commission Coordinator, at (702) 486-4606.

1 YOUR RIGHTS AT THE HEARING: Except as mentioned below, the hearing is an
2 open meeting under Nevada's open meeting law, and may be attended by the public. After
3 the evidence and arguments, the commission may conduct a closed meeting to discuss your
4 alleged misconduct or professional competence. A verbatim record will be made by a certified
5 court reporter. You are entitled to a copy of the transcript of the open and closed portions of
6 the meeting, although you must pay for the transcription.

7 As a RESPONDENT, you are specifically informed that you have the right to appear
8 and be heard in your defense, either personally or through your counsel of choice. At the
9 hearing, the Division has the burden of proving the allegations in the complaint and will call
10 witnesses and present evidence against you. You have the right to respond and to present
11 relevant evidence and argument on all issues involved. You have the right to call and
12 examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any matter
13 relevant to the issues involved.

14 You have the right to request that the Commission issue subpoenas to compel
15 witnesses to testify and/or evidence to be offered on your behalf. In making this request, you
16 may be required to demonstrate the relevance of the witness' testimony and/or evidence.
17 Other important rights and obligations, including your obligation to answer the complaint, you
18 have are listed in NRS Chapter 116 and NAC Chapter 116, including without limitation, NRS
19 116.770 through 116.780, and NAC 116.500 through NAC 116.635 and NRS Chapter 233B.

20 Note that under NAC 116.575, not less than five (5) working days before a hearing,
21 RESPONDENTS must provide to the Division a copy of all reasonably available documents
22 that are reasonably anticipated to be used to support his position, and a list of witnesses
23 RESPONDENTS intend to call at the time of the hearing. Failure to provide any document or
24 to list a witness may result in the document or witness being excluded from RESPONDENTS'
25 defense. The purpose of the hearing is to determine if the RESPONDENTS have violated the

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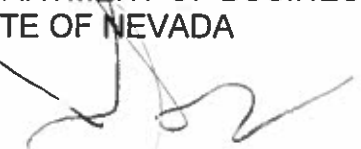
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1 provisions of Chapter 116, and to determine what administrative penalty is to be assessed
2 against RESPONDENTS.

3 DATED this 7th day of April, 2015.

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5 REAL-ESTATE DIVISION
6 DEPARTMENT OF BUSINESS & INDUSTRY
7 STATE OF NEVADA

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